

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARTIN J. WALSH, Secretary of Labor,
United States Department of Labor;

Plaintiff,

v.

JON P. KUBLER, KUBLER FINANCIAL,
INC., and KUBLER FINANCIAL, INC.
SIMPLE IRA PLAN,

Defendants.

8:21CV127

**CONSENT ORDER
AND JUDGMENT**

This matter is before the Court on the parties' joint Amended Motion for Consent Judgment (Filing No. 17).¹ Martin J. Walsh, the Secretary of Labor ("Secretary"), filed a complaint against defendants Jon P. Kubler and Kubler Financial, Inc. (collectively, "Kubler") alleging breaches of their fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001 *et seq.*, with respect to the Kubler Financial Inc. Simple IRA Plan ("Plan"). The Plan was named in the Secretary's Complaint as a party necessary for complete relief pursuant to Fed. R. Civ. P. 19(a).

The Secretary's complaint alleges that Kubler violated ERISA § 403(c)(1), § 404(a)(1)(A) and (a)(1)(B); § 406(a)(1)(D), (b)(1), and (b)(2).² Kubler neither admits nor denies the Secretary's allegations.

¹The parties' original Motion for Consent Judgment (Filing No. 16) is denied as moot.

²Codified at 29 U.S.C. § 1103(c)(1), § 1104(a)(1)(A), and (a)(1)(B); and 28 U.S.C. § 1106(a)(1)(D), (b)(1), and (b)(2).

Kubler and the Secretary have agreed to resolve all matters in controversy in this action between them, and they consent to entry of this Consent Order and Judgment by this Court. Kubler agrees to the entry of this Consent Order and Judgment without contest. The Court agrees with the parties that it has jurisdiction to enter this Consent Order and Judgment.

IT IS ORDERED:

1. Jon P. Kubler and Kubler Financial Inc. are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. § 1001 *et seq.*
2. Within fourteen (14) days of the entry of this Consent Order and Judgment, Kubler shall pay \$21,591.40 to the Plan, which represents a complete settlement of all the Secretary's claims asserted in this action against Kubler, along with civil money penalties specifically required under ERISA § 502(1). Upon receipt, these monies shall be paid to the Plan and allocated to the accounts of Plan participants as set forth on Attachment A. Kubler shall provide the Secretary with satisfactory proof of the payment by submitting documentation to the Regional Director, Employee Benefits Security Administration, 2300 Main Street, Suite 1100, Kansas City, Missouri 64108, within ten (10) days of payment.
3. Kubler also agrees to pay a total of \$4,318.28 in penalties assessed by the Department of Labor pursuant to ERISA § 502(1), within thirty (30) days of the entry of this Consent Order and Judgment. Kubler waives the notice of assessment and service requirement of 29 C.F.R. § 2570.83 for all payments required under this Consent Order and Judgment. The ERISA § 502(1) payment shall be paid to either of the following addresses:

Standard (Regular U.S. Mail) Remittance Address:

ERISA Civil Penalty
P.O. Box 6200-36
Portland, OR 97228-6200

Or

Express Mail or Commercial Overnight Delivery Address:

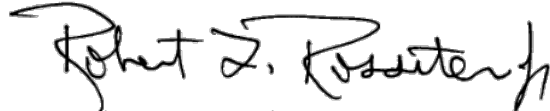
U.S. Bank
Attn: ERISA Civil Penalty #6200-36
17650 NE Sandy Blvd.
Portland, OR 97230

The check should be made payable to the United States Department of Labor and reference EBSA Case No. 60-108503

4. Each party agrees to bear its own attorney fees, costs, and other expenses by such party in connection with any stage of this proceeding to date including, but not limited to, attorney fees that may be available under the Equal Access to Justice Act, as amended.
5. The parties to this Consent Order and Judgment expressly waive any and all claims of any nature which each may have against the other, or any of their officers, agents, attorneys, employees or representatives, arising out of or in connection with the Plan, or based on the Equal Access to Justice Act, as amended.
6. The Court directs the entry of this Consent Order and Judgment as a final order.
7. The Court shall maintain jurisdiction over this matter for a period of ninety (90) days, only for purposes of enforcing this Consent Judgment and Order.
8. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor, Employee Benefits Security Administration.

Dated this 24th day of August 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge

Attachment A

Employee	Employee Deferral Contributions	Employee Lost Earnings	Total
Crystal Hulquist	\$2,100.00	\$366.42	\$2,466.42
Anne Hoeft (Johnson)	\$7,291.52	\$1,272.52	\$8,564.04
D. Joyce Paquette	\$9,000.00	\$1,560.94	\$10,560.94